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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,492

05/16/2006

Dietrich Haarer

11/2-23255/A/FRP 2/PCT

1654

324 7590 09/07/2007
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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT

PAPER NUMBER

2859

MAIL DATE

DELIVERY MODE

09/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,492	Applicant(s) HAARER ET AL.	
	Examiner Gail Verbitsky	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/19/06</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-4, 11-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Simons (U.S. 6514462).

Simons discloses a device/ method in the field of applicant's endeavor comprising time temperature indicator/ TTI/ label attachable to a perishable food product. The method comprising determining of thermal history and thus, remaining life by using a bar code reader.

For claims 3-4: The TTI is light absorbent to the same wavelengths/spectra/ light that a bar code reader (col. 6, lines 43-45) or is capable of indicating a color message (certain color saturation).

With respect to the preamble of claim 1: the preamble of the claims does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and a portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951).

With respect to "whereby"/"thereby", as stated in claims: it has been held that the functional "whereby" statement does not define any structure and accordingly cannot serve to distinguish. In re Mason, 114 USPQ 127, 44 CCPA 937 (1957).

3. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simons in view of Tamura (U.S. 5382125).

Simons discloses a device as stated above.

Although it is very well known in the art of scanning data that the bar code reader can have a light source, Simons does not explicitly teach the light source, as stated in claims 5-9.

Tamura discloses a device/ method in the field of applicant's endeavor wherein time of thermal exposure (thermal history/ TTI) is determined by a machine reader/ bar code reader having a light/ beam source whose light either reflected or transmitted through a label on a food of interest or the label could be irradiated with wavelength absorbed/ transmitted or reflected by the label (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Simons, so as to have a bar code reader along with a laser beam/ light source, as taught by Tamura, so as to enable the operator to make the bar code readable by the particular bar code reader, and make the data available to the operator.

4. Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simons in view of Simunovic et al. (U.S. 7213967) [hereinafter Simunovic].

Simons discloses a device as stated above.

Simons does not explicitly teach that the packages of food are moving on a supply line/ conveyor or moving carriage, as stated in claims 15 and with the remaining limitations of claims 15, 20.

Simunovic teaches that time temperature of a moving food particle could be determined by labeling the food particle and reading temperature of the particle at different points/ nodes of a stream of food particles (col. 20, lines 43-61).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Simons, so as to use the device on the food moving on the container, as taught by Simunovic, so as to obtain data from the plurality of food particles/ packages and enable the operator sort out the food accordingly.

5. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simons in view of Zalameda et al. (U.S. 200301939870 [hereinafter Zalameda]).

Simons discloses a device/ method in the field of applicant's endeavor as stated above.

Simons does not teach a particular light source as a flash lamp.

Zalameda teaches to determine time temperature data of a sample wherein the sample is irradiated with a flash lamp and reflected or transmitted light is detected by a light detector and it is indicative time-temperature profile of the sample.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Simons, so as to

irradiate the device with a flash lamp, so as to provide more heating of the device in order to obtain a detectable response/ reflection, as very well known in the art.

With respect to "whereby"/"thereby", as stated in the claims: it has been held that the functional "whereby" statement does not define any structure and accordingly cannot serve to distinguish. In re Mason, 114 USPQ 127, 44 CCPA 937 (1957).

7. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simons in view of Ghiron (U.S. 5722317) [hereinafter Simons].

Simons discloses a device/ method in the field of applicant's endeavor as stated above.

Simons does not teach the limitations of claims 20-21.

Ghiron discloses in Fig. 1 a device/ method and teaches that temperature of a moving product could be determined along the stream of movement/ conveyor (supply chain) where the moving product changes hands/ direction. The device comprises a plurality of such nodes, wherein each node comprising a temperature sensor 24, inherently having a nominal range. The device operates according to a protocol predetermined by a computer.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device/ method disclosed by Simons, so as to use the device on the food moving supply chain, as taught by Ghiron, so as to obtain data how the temperature changes along the chain and enable the operator sort out the food accordingly.

Conclusion

Art Unit: 2859

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

Gail Verbitsky

Primary Patent Examiner, TC 2800



August 13, 2007